# In the Supreme Court of the United States

OCTOBER TERM, 1974

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No. 74-930

STATE OF ILLINOIS, ET AL., PETITIONERS

*v.*

FEDERAL POWER COMMISSION, ET AL.

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

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## MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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Petitioners contend that the court of appeals erroneously denied the State of Illinois custody over certain funds in the United States Treasury.

1. On September 23, 1942, the Federal Power Commission ordered Panhandle Eastern Pipeline Company (Panhandle) to reduce its gas rates. Upon petition for review, the court of appeals granted a stay of the rate reduction order on condition that a sum of money equaling the difference between existing rates and those required by the Commission order be deposited with the court pending a final determination of the validity of the order. *Panhandle Eastern Pipeline Co.* v. *Federal Power Commission*, 179 F. 2d 896, 898 (C.A. 8). On June 6, 1944, the court of appeals affirmed the rate reduction order, 143 F. 2d 488, and on April 2, 1945, this Court affirmed the court of appeals' decision, 324 U.S. 635.

The court of appeals then ordered that approximately $24.8 million, which had accumulated during the stay, be allocated to Panhandle distributors and consumers located in Indiana, Illinois, Missouri, Michigan, Kansas, Texas and Ohio. *Panhandle Eastern Pipeline Co.* v. *Federal Power Commission, supra,* 179 F. 2d at 899. As of October 31, 1949, however, 5 percent of the accumulated fund (approximately $1,300,000) remained undistributed to consumers who had not been located. See 179 F. 2d at 899, 903. Pursuant to 28 U.S.C. 2041 and 2042[1] the clerk of the court of appeals deposited this sum in the Treasury of the United States.

In 1955, the State of Michigan, asserting that by operation of its laws of escheat it was a "claimant entitled to * * * such money" within the meaning of 28 U.S.C. 2042, petitioned the court of appeals for an order transferring to it that portion of the unclaimed funds owing to Michigan consumers. On the basis of a stipulation between the parties, and by order of November 16, 1955, the court of appeals directed that such monies be paid to the Michigan State Board of Escheats.

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[1]28 U.S.C. 2041 provides:

> All moneys paid into any court of the United States, or received by the officers thereof, in any case pending or adjudicated in such court, shall be forthwith deposited with the Treasurer of the United States or a designated depositary, in the name and to the credit of such court.
>
> This section shall not prevent the delivery of any such money to the rightful owners upon security, according to agreement of parties, under the direction of the court.

28 U.S.C. 2042 provides:

> No money deposited shall be withdrawn except by order of court.
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> In every case in which the right to withdrawal money deposited in court has been adjudicated or is not in dispute and such money had remained so deposited for at least five years unclaimed by the person entitled thereto, such court shall cause such money to be deposited in the Treasury in

On March 18, 1974, the State of Illinois filed a petition seeking *custody* (rather than escheat) over $167,389.06, the portion of the fund owing to Illinois consumers. On October 29, 1974, the Eighth Circuit held that because 28 U.S.C. 2041 and 2042 authorize release of monies on deposit in the United States Treasury only to owners of the monies rather than to custodians, and the Illinois statute upon which the state based its claim is custodial in nature, the State had not asserted a valid claim. Accordingly, the petition was denied (Pet. App. 1A-3A).

2. 28 U.S.C. 2042 provides that money on deposit in the Treasury shall be paid to "[a]ny claimant entitled to * * * such money * * * ." In *United States* v. *Klein*, 303 U.S. 276, 280, where the Commonwealth of Pennsylvania sought to obtain by escheat unclaimed funds deposited in the United States Treasury, this Court held that a claimant to funds on deposit in the Treasury may obtain such funds, pursuant to 28 U.S.C. 2042, only upon establishing proof of ownership (satisfied by an escheat statute): "the fund remains * * * to be paid to the persons lawfully entitled to it upon proof of their ownership." Lower federal courts following *Klein* have consistently held that a claimant must have an ownership interest before he can obtain funds on deposit in the Treasury pursuant to 28 U.S.C. 2042. *Hodgson* v. *Wheaton Glass Co.*, 446 F. 2d 527 (C.A. 3); *Application of the People of the State of New York*, 138 F. Supp. 661 (S.D. N.Y.); *In re MacMasters*, 60 F. Supp. 733 (S.D. N.Y.); *Klein* v. *Brodbeck*, 15 F. Supp. 473 (E.D. Pa.).

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the name and to the credit of the United States. Any *claimant entitled to any such money* may, on petition to the court and upon notice to the United States attorney and full proof of the right thereto, obtain an order directing payment to him. [Emphasis supplied.]

Here, however, as the court of appeals noted, the Illinois statute under which petitioners claim a portion of the funds (Ill. Ann. Stat., ch. 141, Sections 104(b), 107, 108, 114) gives the State of Illinois custody over the funds, not legal title. "[The statute] is custodial in character and * * * the State takes custody for the owner." *Insurance Company of North America* v. *Knight*, 8 Ill. App. 3d 871, 876, 291 N.E. 2d 40, 44, appeal dismissed *sub nom. Insurance Company of North America* v. *Montgomery*, 414 U.S. 804.[2] Accordingly, the State of Illinois has not shown that it is "lawfully entitled [to the funds] * * * upon proof of their ownership" (*Klein, supra*, 303 U.S. at 280), and its claim was properly rejected.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
*Solicitor General.*

MARCH 1975.

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[2]The Illinois statute is a codification of the Uniform Disposition of Unclaimed Property Act (Pet. App. 2A-3A).